Spain


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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

Alternative Investment Fund (hereinafter, "AIF") means a collective investment scheme undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) does not require authorisation pursuant to article 5 of Directive 2009/65/EC.

Spanish legislation distinguishes between closed-ended and opened-ended AIFs.

Spanish closed-ended AIFs are governed by Law 22/2014, of 12 November 2014, regulating private equity entities, venture capital entities and other closed-ended collective investment entities and the management companies of closed-ended collective investment entities, and amending the Law on Collective Investment Schemes ("Law 22/2014"), which transposes Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ("AIFMD") applicable to companies managing AIFs.

Spanish open-ended AIFs, that is, "*Fondos de Inversión Libres*" ("FILs") or "*Sociedades de Inversión Libre*" ("SILs") (known internationally as "hedge funds") are governed by Law 35/2003, of 4 November, on Collective Investment Schemes ("Law 35/2003"), which transposes AIFMD and Royal Decree 83/2015, of 13 February, amending Royal Decree 1082/2012, of 13 July, approving the Regulation for the Development of Collective Investment Schemes Law ("RD 83/2015"). This regulation is completed with CNMV Circular 1/2006, of 3 May, regulating detailed aspects of open-ended AIFs.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

The management of AIFs is a regulated activity in Spain, limited to duly authorised management companies. As described in question 2.4 below, both "*Sociedades Gestoras de Instituciones de Inversión Colectiva*" ("SGIICs") and "*Sociedades Gestoras de Entidades de Inversión Colectiva de Tipo Cerrado*" ("SGEICs") are regulated by the Spanish National Securities Market Commission ("CNMV") and require its prior authorisation.

Non-Spanish Alternative Investment Fund Managers ("AIFMs") authorised in other EU Member States can be passported with no need to obtain further authorisation or any other additional requirements and may operate under the freedom to provide services, with or without a branch office.

Management companies from non-EU countries are required to obtain prior authorisation from and registration with the CNMV in order to undertake marketing services in Spain. The AIF to be marketed in Spain is subject to registration in the CNMV.

AIFMs, once authorised, are entered into a special register in the CNMV. They must also be registered in the Commercial Register ("*Registro Mercantil*"). AIFMs must be duly registered before they can start their activities.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Yes, the CNMV is responsible for authorising the establishment of Spanish AIFs through a two-tier procedure, comprising (a) authorisation by, and (b) registration with, the CNMV.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity *vs* hedge)) and, if so, how?

Spanish legislation distinguishes between open-ended and closed-ended AIFs, which are regulated, respectively, under Law 35/2003 and Law 22/2014 (see question 1.1 above). These laws regulate the structure and the applicable requirements, aspects and procedures applicable to the different types of AIFs.

Unlike AIFMD, Spanish legislation does not provide a specific definition of Alternative Investment Funds.

In our opinion, all collective investment schemes that do not qualify as UCITS should be classified as AIFs (i.e. FILs, SILs or "*IIC de IIC de inversion libre*" ("IICICCIL"), a fund of hedge funds); venture capital entities should also be added to this category.

Open-ended AIFs are those whose object is the collective investment of the funds raised from the public and whose operation is subject to the principle of risk sharing, and whose units, at the request of the holder, are repurchased or reimbursed, directly or indirectly, out of the assets of these undertakings. Open-ended AIFs may adopt the form of either an investment fund or an investment company, and can be financial or non-financial, depending on their purpose and on whether or not they invest in financial instruments or assets.

Closed-ended AIFs are those collective investment entities that, lacking a commercial or industrial goal, raise capital from investors, through an advertising activity, to invest in all types of financial and non-financial assets, according to a defined investment policy.

Under Law 22/2014, closed-ended AIFs are denominated as "*Entidades de Inversión de Capital Cerrado*" or "EICC" and are divided into the following types: (i) closed-ended investment funds ("*Fondos de Inversión de Capital Cerrado*" or "FICC"); and (ii) closed-ended investment companies ("*Sociedades de Inversión de Capital Cerrado*" or "SICC"). Additionally, Law 22/2014 establishes two types of closed-ended entities focused on private equity activity: "*Entidades de Capital Riesgo*" or "ECR"; and companies ("*Sociedades de Capital Riesgo*" or "SCR").

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

The authorisation process for AIFMs managing closed-ended AIFs under Law 22/2014, which is also applicable to AIFMs managing open-ended AIFs under Law 35/2003, requires completion of the following steps:

(a) Authorisation by the CNMV.
(b) Incorporation of the company in a public deed.
(c) Registration in the Commercial Register ("*Registro Mercantil*").
(d) Registration in the special CNMV register.

The application for authorisation of the AIFMs must include, *inter alia*, producing and providing the following documentation and information:

(a) Information on the directors of the AIFM, including information on the suitability of the management body and managers of the company.
(b) Identification of the direct or indirect qualified shareholders.
(c) Drafting the articles of association and activities programme containing the administrative structure of the AIFM, the activities to be undertaken and technical and human resources.
(d) Information on decisions on delegation or sub-delegation to third parties of certain functions.
(e) Information on the remuneration policies and practices of the managers, risk control function holders and other key function holders.
(f) Information about the investment strategies, types of sub-funds, leverage policy and risk profiles and other features of the entities the AIFM intends to manage, and other relevant information regarding such entities as detailed in article 45.3 of Law 22/2014.
(g) Any other relevant information.

The authorisation by the CNMV must be notified within three months from the submission of the application for authorisation or from the date the requested documentation has been submitted.

The incorporation of closed-ended AIFs requires the submission of the following documentation:

(a) The information specified in article 45.3 of Law 22/2014 (including, among others, information on investment strategies, the type of underlying funds, policy on the use of leverage, risk profiles and other characteristics of managed funds and place of establishment, rules or instruments of incorporation).
(b) If the AIF is incorporated as a company, the public deed and registration in the Commercial Register ("*Registro Mercantil*"). If the AIF adopts the legal form of a fund, these requirements are optional.
(c) Registration of the aforementioned documents in the special CNMV register.

The incorporation of open-ended AIF requires the submission of the following documents:

(a) A memorandum.
(b) A report on the assessment of the suitability of the management body and managers of the AIF.
(c) Any data, reports or records deemed appropriate to verify compliance with the legal requirements.
(d) In the case of funds, the prospectus and the key investor information document ("KIID") and the relevant internal regulations.
(e) In the case of an AIF incorporated as a self-managed company, a memorandum containing the administrative structure of the AIFM and its articles of association.

The authorisation of open-ended AIFs and self-managed AIFs by the CNMV must be notified within two and three months, respectively, from the submission of the application for authorisation or from the date the requested documentation is submitted.

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

AIFs or AIFMs that carry out their activities in Spain will be subject to local residence or qualification requirements, except in those cases where the AIFM is authorised to carry out its activities in Spain on a cross-border basis through the EU passport, as specified in question 1.2 above.

Foreign AIFs marketed in Spain shall designate a legal person responsible for complying with the general provisions of disclosure of information and communication of any change affecting the essential elements in its offering to investors or data registration with the CNMV. In addition, all foreign AIFs will be required to submit to the CNMV statistical data on a regular basis.

Management companies operating under the freedom to provide services in Spain need to appoint a representative with tax residence in Spain in order to comply with any applicable tax obligations.

1.7 What service providers are required?

In accordance with the applicable legislation, AIFs must appoint a depositary company in respect of securities, cash or any other assets. In the case of closed-ended AIFs, the obligation to appoint a depositary is subject to the following thresholds:

(a) the managed assets amount to at least EUR 100,000,000, including assets purchased by leverage; or
(b) EUR 500,000,000 when the AIFs under management are not subject to leverage and they have no redemption rights within a period of five years from the initial investment date.

In the case of investment funds, they must be managed by a management company (in the case of investment companies, the appointment of a management company is optional). The functions of management, administration and control can be provided by the management company itself or by a third party.

AIFs incorporated as companies must also have a suitable administrative and accounting system and internal control

procedures, including risk management procedures, together with IT control and safety procedures, and anti-money laundering bodies and procedures.

An AIF must be audited and can be marketed by the management company or by a placing agent.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Under Law 35/2003, foreign managers or advisers wishing to manage, advise or operate open-ended funds domiciled in Spain can do so if they have been authorised in accordance with the UCITS Directive in another Member State. In such case, they can operate in Spain either through a subsidiary or under the freedom to provide services, without further authorisation or the obligation to contribute to an endowment fund or any equivalent measure.

Under Law 22/2014, foreign managers or advisers wishing to manage, advise or operate closed-ended funds domiciled in Spain can do so by filing a request for authorisation before the CNMV if they have been authorised in another Member State under the UCITS Directive.

According to article 82 of Law 22/2014, EU management companies are also allowed to manage closed-ended AIFs domiciled in Spain, as well as to provide services in Spain either through a subsidiary or under the freedom to provide services with similar procedures to those under Law 35/2003 for open-ended AIFs.

Article 49 of Law 22/2014 establishes the obligation of the CNMV to consult with the national authority of the Member State where the management company was authorised, prior to authorisation of a foreign management company in certain circumstances.

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

Within the EU supervisory framework, the CNMV has entered into many information exchange agreements with other jurisdictions and supervisory bodies from within the EU and abroad.

Details on information sharing agreements are available on the CNMV's website.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds (including reference where relevant to local asset holding companies)?

AIFs can adopt the form of a fund or a company.

Funds have no legal personality and, therefore, they must appoint a management company. AIFS incorporated as a company can be managed directly (by its own board of directors), or by delegating the management to an authorised management company.

The main legal structures for open-ended AIFs are investment funds whose objective is to obtain the highest possible return using all the investment opportunities available to the manager (FILs, SILs or IICICCIL, a fund of hedge funds), as well as real estate CIIs and non-UCITS open-ended CIIs other than those mentioned above.

The main legal structures for closed-ended AIFs are private equity entities (which can take the form of funds or companies) and other types of entities (i.e. closed-ended collective investment entities, which can be either funds or companies, as explained in in question 1.4 above).

Other available AIFs structures are European Venture Capital Funds, regulated by Regulation (EU) 345/2013, of 17 April, European Social Entrepreneurship Funds, regulated by Regulation (EU) 346/2013, of 17 April, European Long-Term Investment Funds, regulated by Regulation (EU) 2015/760, of 29 April, and the new category of Closed-ended Collective Investment Schemes of Loans, regulated by Law 18/2022, of 28 September, on the creation and growth of companies.

2.2 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

Under Law 35/2003, open-ended AIFs can be structured as umbrella funds and each sub-fund will issue its own units, representing the capital attributed to the sub-fund. The capital attributed to each sub-fund will be exclusively liable for the costs, expenses and any other obligations expressly attributed to such sub-fund, together with any costs, expenses and any other obligations not specifically attributed to a sub-fund, according to the terms established in the prospectus of the fund. Each sub-fund is exclusively liable for the commitments undertaken in the course of its activities and of the risks of the assets in which it invests. Creditors of a sub-fund will only have recourse to the capital of the sub-fund, without prejudice to the liabilities of the sub-fund deriving from its tax obligations.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The investors (i.e. participants of the AIF) will be responsible up to the limit of their contributions to the AIF.

2.4 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The management of AIFs is a regulated activity, limited to duly authorised management companies. The management companies may have the following legal structures:

(a) SGEICs, incorporated as a public limited company, which may manage closed-ended AIFs.

(b) SGIICs, which can manage both open- and closed-ended AIFs. The legal status of SGIICs is similar to SGEICs.

2.5 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

The management companies of open-ended AIFs issue and redeem shares at the same intervals as net asset value calculations upon the request of any participant, under the terms established in the relevant regulations. Notwithstanding the foregoing, AIFs do not have to grant the requested redemption on a net asset value calculation date set by the participant. It does not constitute any right by itself and shall be expressly established in its prospectus, but in any event the right to redemption must be exercisable at least on a quarterly basis or, depending on the investments, on a twice-yearly basis.

In principle, subscription or redemption of shares may only be restricted or suspended if there is just cause or in cases of *force majeure*.

Closed-ended AIFs can establish restrictions on redemptions and will be subject to their own governing provisions.

2.6 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

There are no specific legislative restrictions. However, general principles of public order and company law may apply.

2.7 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

Open-ended AIFs are subject to the diversification of risks rules established in Title 3 of Law 35/2003 and the asset stripping rules established in article 47 *bis* of Law 35/2003.

Closed-ended AIFs are subject to the diversification requirement established in Chapter II, Section 2 of Law 22/2014 and the asset stripping rules established in article 71 of Law 22/2014.

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

Both SGIICs and SGEICs have the right to management fees and/or performance fees, which must be established in the prospectus of the fund. In the case of open-ended funds, there are certain limitations established in article 5 of Royal Decree 1082/2012.

Carried interest may be structured either as a success fee payable to the management company or as a return from the investment made by the management company, or sponsors or promoters of the fund.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

Law 35/2003 and Regulation 1082/2012 apply to open-ended AIFs and Law 22/2014 to closed-ended funds.

Additional legislation includes: (i) Law 6/2023, of 17 March, on the Securities Markets and Investment Services, which establishes the basic conditions for marketing materials; (ii) Law 34/1998, of 11 November, on General Advertising; (iii) Royal Decree 217/2008, of 15 February, on investment firms; (iv) "Orden EHA/1717/2010", of 11 June, on regulation and control of the publicity of investment products and services; and (v) Circular 2/2020, of 28 October, of the Spanish Securities Exchange Commission, on marketing of investment products and services ("Circular 2/2020").

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

The principles, criteria and rules on marketing materials are established in the Annex to Circular 2/2020.

For retail investors, the legislation of Packaged Retail Investment Products ("PRIIPS") came into force in January 2018. Funds shall not carry out their activities until the KIID and information brochure is registered in the relevant CNMV administrative register.

Regarding closed-ended AIFs, upon the entry into force of PRIIPS, a KIID is required to be delivered to any retail investor. Additionally, there are pre-investment disclosure obligations for each closed-ended fund (e.g. strategy and investment policy), as well as periodic reporting requirements to investors and the CNMV.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

In addition to the specific legislation regarding control of the publicity of investment products and services (see question 3.1 above), AIFs must comply with the provisions established in Act 34/1998, of 11 November, on General Advertising, and Law 3/1991, of 10 January, on Unfair Competition.

3.4 What restrictions (and, if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

AIFs, as a rule, are marketed to professional clients, as defined in the Spanish Securities Market Act. The marketing to retail clients is an exception limited to those retail clients who commit to invest a minimum of EUR 100,000 and acknowledge in writing that they understand the risks of the fund being marketed.

Pursuant to Law 18/2022, of 28 September, on the creation and growth of companies, marketing of venture capital vehicles to retail investors is possible when such retail investors make their investment on the basis of a personalised investment advice recommendation, and provided that the investment amounts at least to EUR 10,000 and does not represent more than 10% of the assets of the retail investor (in case those assets do not exceed EUR 500,000).

Authorisation is required for the marketing of third country AIFs in Spain. The CNMV monitors compliance with these obligations. Authorisation for marketing in Spain may be refused due to prudential reasons, specifically: (i) not being treated in an equivalent manner to investment funds in the respective country of origin; (ii) non-compliance with the rules of order and discipline in the Spanish securities markets; (iii) not sufficiently ensuring the adequate protection of investors resident in Spain; or (iv) the existence of disruption in the conditions of competition between AIFs authorised outside Spain and those authorised in Spain.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

A harmonised definition of pre-marketing is regulated under article 2 *bis* of Law 35/2003 in respect of open-ended funds and under article 75 *bis* of Law 22/2014, in respect of closed-ended funds, as a result of the transposition of Directive EU 2019/1160.

Pre-marketing is defined, in the same terms as in the Directive, as the supply of information or the direct or indirect communication of investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional or potential professional investors domiciled or with a registered office in the EU in order to test their interest in an AIF or a compartment that is not yet established, or which is established, but not yet notified for marketing in that Member State where the potential investors are domiciled or have their registered office,

and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

Please see the answer to question 3.4.

According to AIFMD and MiFID, AIFs managed by AIFMs regulated by AIFMD may be marketed and advertised to retail investors but subject to enhanced investment requirements established under Spanish legislation in order to ensure protection for such retail investors.

Accordingly, closed-ended funds can be marketed to retail investors provided the following conditions are fulfilled: (i) an investment of, at least, EUR 100,000; and (ii) a written declaration from the retail investor confirming that it is aware of the associated risks. In the case of venture capital vehicles, please see the potential marketing to retail investors provided by Law 18/2022, of 28 September, on the creation and growth of companies described in question 3.4.

3.7 What qualification requirements must be met in relation to prospective investors?

Prior to investment, investors shall declare, in writing, that they acknowledge the investment risks.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

The legislation does not provide any additional restrictions on marketing to public bodies.

3.9 Are there any restrictions on the participation in Alternative Investments Funds by particular types of investors (whether as sponsors or investors)?

There are no general restrictions in the applicable laws or regulations. However, it is advisable that an in-depth analysis be carried out, on a case-by-case basis, on the individual restrictions resulting from legal or statutory provisions of the relevant sponsor or investor.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Financial intermediaries, which can be banking or non-banking entities, are authorised to perform activities of selling, buying, transferal or subscription of participations in AIFs. Investors cannot buy or sell securities listed on organised markets directly and, therefore, must do so through financial intermediaries.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

AIFs' investment objects can consist of either financial or non-financial activities. The distinction between open-ended and closed-ended funds is explained in question 1.4.

Closed-ended funds are subject to different restrictions regarding their object, as this cannot constitute a commercial or industrial purpose. The object of closed-ended funds must be related to a predefined investment policy.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

Law 35/2003 provides that the requirements for financial UCITS are applicable to open-ended AIFs.

To comply with the principle of risk diversification, AIFs must meet the limitations on the minimum percentage of the assets to be invested (in some cases, investment in assets and financial instruments may not exceed certain thresholds).

SGEICs must establish a maximum level of leverage to which they may have recourse. SGEICs have to disclose sufficient information regarding the main characteristics of every single fund, level of risks and leverage limits to the potential investors.

4.3 Are there any local regulatory requirements that apply to investing in particular investments (e.g. derivatives or loans)?

There are no additional requirements for AIFs in any investments beyond those established in Law 35/2003; more specifically, AIFs will be authorised to invest in the assets listed in article 30 of such Law without any limitations other than those described above, as well as the limitations established by the articles of association of the entities involved.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

In accordance with article 30 (7) Law 35/2003, in the case of financial open-ended AIFs, their indebtedness may not exceed 10 times the value of their assets. Investment companies, when indebted for the acquisition of immovable assets that are essential for the direct pursuit of the business, may not exceed this limit. In such cases, financial open-ended FIAs' debts may not exceed 15 times the value of their assets. In both open-ended and closed-ended funds, the cap on borrowing shall be specified in the prospectus.

4.5 Are there are any restrictions on who holds the Alternative Investment Fund's assets?

Securities and assets of open-ended AIFs portfolios must be held in custody under a regulated depositary.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

In general, AIFMs shall disclose any relevant information regarding the circumstances and development of the institution. Such relevant information must be reported immediately to the CNMV. "Relevant information" to an AIF means any information that may reasonably affect the acquisition or transfer of shares or units of an investor, therefore having an impact on the AIF's net asset value.

For open-ended AIFs, a series of documents must be provided on a mandatory basis, including but not limited to: (i) a prospectus, containing the investment fund rules; (ii) the KIID; (iii) an annual report containing the annual accounts, the management report and the audit report; and (iv) two quarterly reports.

In the case of closed-ended funds, AIFMs must provide, for each AIF managed, an annual report containing the annual accounts, an audit report, any amendment to the information provided to the shareholders or unitholders and the remuneration policies. Additionally, regular information must also be disclosed to the CNMV and investors according to articles 69 and 70 of Law 22/2014.

In any event, for both open-ended and closed-ended funds, retail investors must be provided with a KIID. Additionally, the AIF's prospectus and the operating memorandum (or the articles of association in case of a self-managed alternative investment company) must be provided to the investor.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example, for the purposes of a public (or non-public) register of beneficial owners?

There is no specific legal obligation to provide details of participants in AIFs. However, AIFMs must keep a record of the participants' data (with no reporting obligations).

There are registration requirements in accordance with Law 10/2010, of 28 April, on the prevention of money laundering and terrorism financing and Order JUS/794/2021 regarding the register of beneficial owners.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

An AIFM must provide the CNMV with any information it requires at any time, and shall provide, on a regular basis, information about: (i) the principal markets and instruments in which it trades on behalf of the fund, company or entity it manages; (ii) the main instruments in which the fund trades; and (iii) the principal exposures and concentration of each of the funds it manages. In particular, and as mentioned in question 5.1 above, AIFMs shall provide the CNMV with an annual report.

Open-ended AIFs must submit to the CNMV a monthly memorandum containing the operational statistics, and the investment portfolio. Additionally, they must provide every investor with a semi-annual and a quarterly report.

Closed-ended AIFs should inform the CNMV about, *inter alia*: (i) the percentage of the fund's assets that are subject to special arrangements arising from their illiquid nature; (ii) any new arrangements for managing the liquidity of the fund; (iii) the actual risk profile of the fund and risk management systems used by the management company for, among others, market risk, liquidity risk, counterparty risk and operational risk; (iv) the main categories of assets in which the AIF has invested; and (v) the results of the stress tests.

SGIICs, SGEICs or any other management companies providing services on a cross-border basis must report statistical information on a regular basis to the CNMV. Circular 2/2017 of the CNMV establishes the information requirements.

As for the information to be provided to the investors, please refer to question 5.1 above.

5.4 Is the use of side letters restricted?

Any preferential treatment granted to (an) investor(s) shall be disclosed in the prospectus. Moreover, AIFs shall comply with the relevant provisions in relation to conflicts of interest and the overall obligation to keep investors duly informed.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds and local asset holding companies identified in question 2.1?

The tax treatment of the main forms of AIF depends on whether the fund is an open-ended or a closed-ended fund.

Open-ended funds are subject to a special tax regime established in the Spanish Corporate Income Tax Law, which includes the application of a 1% tax rate if certain requirements are met.

Closed-ended funds (i.e. private equity entities) are subject to the general Spanish Corporate Income Tax rate of 25% on their worldwide income. However, these types of funds benefit from: (i) a 99% tax exemption for capital gains derived from the sale of subsidiaries; and (ii) a 95% exemption for dividends obtained from their subsidiaries, both subject to certain requirements.

These tax measures are compatible with the existing participation exemption regime, which may also be applicable.

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.4?

The Spanish tax system does not provide for any special tax treatment for investment managers or advisers (other than as described below). Consequently, the general provisions set out in the Spanish Corporate Income Tax Law will apply and the tax rate will be 25% on their worldwide income.

The management of the fund may be exempt from VAT if several requirements are met.

From 1 January 2023, a new regime for carried interest taxation has been introduced by means of Law 28/2022, of 21 December, to promote the Spanish startup ecosystem. In the case of income earned by directors, employees or managers of specific closed-ended AIFs (including venture capital entities and funds) and of their management entities, from shares or other rights, including success fees, which grant special rights over the abovementioned closed-end alternative investment entities or funds (or their managing or group entities), which qualifies and is taxed as employment income, provided that certain requirements are met, carried interest can benefit from a 50% reduction for personal income tax purposes.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

No. However, further analysis would be required on the tax implications derived from the transfer of participations in a fund with more than 50% of its assets in real estate located in the Spanish territory. Spain has introduced an anti-abuse clause in order to avoid the transfer of real estate through the sale of real estate companies. However, this clause will not apply if the real estate owned by these companies is used for business activities.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

Both resident and non-resident investors, as well as pension fund investors, will be taxed on dividends and capital gains, if any, derived from the sale of shares. Capital gains will be assessed on the difference between the transfer value and the acquisition cost.

Residents

Individuals will be subject to a 19% to 28% tax rate, and companies will be subject to a fixed 25% tax rate.

It is important to point out that Spanish tax-resident individuals will not be taxed on the capital gains derived from the sale of participations in an investment fund, provided a subsequent investment in a qualifying investment fund is made.

Non-residents

Depending on the applicable tax treaty, capital gains may be taxed at the source or only in the country of residence of the seller. In addition, EU residents may apply for an exemption on the capital gains obtained in Spain. As a rule, the applicable tax rate will be 19%. However, if the non-resident constitutes a permanent establishment ("PE") in Spain, the tax rate will be 25% and the Corporate Income Tax provisions will apply.

Capital gains arising from the transfer or reimbursement of participations in a closed-ended AIF obtained by a non-resident investor would not be considered as having being obtained in Spain for taxation purposes. However, this rule will not apply if the non-resident investor resides in a country qualified as a tax haven for tax purposes or if capital gains are obtained through a tax haven.

Pension fund investors

Tax treatment of pension fund investors will depend on their tax residence as indicated in previous paragraphs.

Income obtained by a Spanish-resident pension fund will be subject to Corporate Income Tax at 0% over its income if it is covered under the scope of Act 1/2002, of 29 November.

Dividends obtained by a pension fund resident in the EU or EEA will not be subject to withholding tax in Spain.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund or local asset holding company?

It is not strictly necessary to obtain a tax ruling from the Administration prior to establishing an AIF. However, it would be advisable to file a tax ruling in order to ascertain the tax treatment given by the Administration to a particular AIF.

The ruling must be issued by the General Tax Directorate within six months following filing. Tax rulings duly requested are binding on the tax authorities, and their criteria must necessarily be applied to taxpayers in similar cases, provided the regulations existing at the time of issuance and the applicable case law remains unchanged. However, in practice, the tax authorities may change their criteria on newly issued tax rulings from time to time, but such changes will not have retroactive effects on taxpayers that have obtained a tax ruling (the new criteria will supersede the previous ones for future cases).

The filing of a tax ruling prevents penalties in case of a tax audit, provided the facts are the same.

6.6 What steps have been or are being taken to implement the US Foreign Account Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

FATCA has been implemented in Spain by "Orden HAP/1136/2014", which regulates Form 290 used to provide information to the Spanish tax authorities in order to comply with the FATCA provisions. Spanish Royal Decree 1065/2007 Regarding the Obligation to Report Information on Financial Accounts has also been adapted to incorporate the FATCA provisions.

Spain has reported information in accordance with the Common Reporting Standard ("CRS") since 2016.

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example, ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

Spain has passed measures to adopt the actions of the OECD's Action Plan with regard to Action 6 ("Prevent treaty abuse"). Spain has signed tax treaties with several countries (Belgium, Bolivia, Croatia, Cuba, Ireland, Israel, Nigeria, Portugal, Russia, Slovenia, etc.), with a specific Limitation on Benefits ("LoB") clause. The tax treaty between Spain and the United States contains a global LoB clause. Spain has also introduced excluding clauses for several entities or regimes (for example, in the tax treaties with Barbados, Jamaica, Luxembourg and Uruguay).

In addition, in 2017 Spain signed the Multilateral Convention to Implement Tax Treaty Related Measures to prevent BEPS ("MLI"). On 28 September 2021, Spain ratified the MLI, which entered into force in Spain on 1 January 2022.

6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

There are no tax-advantaged asset classes or structures other than those described in question 6.1 above.

6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

No, there are not.

6.10 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

No, there are not.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

In recent years, there has been a trend of creating customised products for large investors. Environmental, social and governance ("ESG") reflections continue to rise in the financial sector in general. Also, co-investment remains attractive.

We would like to highlight that, pursuant to Law 18/2022, of 28 September, on the creation and growth of companies, marketing of venture capital vehicles to retail investors is now possible, when such retail investors make their investment on the basis of a personalised investment advice recommendation, and provided that the investment amounts at least to EUR 10,000 and does not represent more than 10% of the assets of the retail investor (in case those assets do not exceed EUR 500,000).

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

The Digital Operational Resilience Act ("DORA") rules will become fully applicable as from 17 January 2025 and will apply to asset management companies. Supervisory authorities are currently developing technical standards.

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